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Page: 1 of 26 06/25/2010 10:47 AM

RECEIVED

JAN 13 2010

TOWN OF STERLING
TOWN CLERK

Town Clerk
FINDINGS AND DECISION

OWNER:
RE: Application of J. Whitney Development, Inc.
Request for Changes to Comprehensive Permit

DATE: January 11, 2010

PROCEDURAL HISTORY

1. On December 1, 2009, Attorney Peter A. Campobasso, on behalf of J. Whitney Development, Inc., of Leominster, Massachusetts, requested the Zoning Board of Appeals of Sterling to authorize the following changes pursuant to 760 CMR 56.05(11) to the comprehensive permit for "Northgate Meadows" dated February 21, 2006, filed with the Town Clerk on March 9, 2006:

1. Amend Condition #2 to allow 158 dwelling units, consisting of 86 homeownership units and 72 rental units.
2. Delete the second sentence of Condition #34.
3. Delete sentences 3-8 inclusive of Condition 41, and incorporate by reference the DHCD project eligibility letter dated April 4, 2006.
4. Amend the site plan to exclude Parcel G1 as shown on the new plan of record.

2. The Applicant submitted to the Board with the request for change the following documents and exhibits;

- A. The Comprehensive Permit;
- B. A copy of the site approval letter from Mass Housing under its Housing Starts Program;
- C. A copy of the original site plan;

A True Copy

Attest:

Sterling Town Clerk

26/B

Property: Lot 1, Plan Book 496, Page 75
Leominster Road, Sterling, MA.

- D. A copy of the reviewed modified site plan showing two apartment buildings
- E. A copy of the Town of Sterling's LIP endorsement letter;
- F. A copy of the April 4, 2006 site approval and extension from the Department of Housing and Community Development.

DETERMINATION

At its meeting of December 17, 2009, the Sterling Zoning Board of Appeals (ZBA) determined the above-referenced changes to the comprehensive permit to be "insubstantial" and the comprehensive permit issued to J. Whitney Development, Inc., dated February 21, 2006 shall be deemed modified to incorporate the changes as follows:

FINDINGS

1. Delete Finding 5.b in its entirety and substitute the following therefor:

b. evidence of a subsidy as indicated by the project eligibility/site approval letter of the Department of Housing and Community Development (DHCD) dated April 4, 2006, extended to May 6, 2010.

CONDITIONS

1. In Condition #1, delete the reference to "760 CMR 31.03" and substitute "760 CMR 56.05." Change the references to the plans of record and incorporate the following change therefor:

* Proposed 158 Units Northgate Meadows Site Development Plan in Sterling Massachusetts dated January 27, 2005 with revisions through January 30, 2007; and

* Architectural Drawings [REDACTED]

2. Delete Condition # 2 in its entirety and incorporate the following change therefor:

2. The Development shall be limited to 158 dwelling units, consisting of 86 homeownership units in 18 buildings and 72 rental units in two buildings.

3. Delete Condition #3 in its entirety and incorporate the following change therefor:

3A. Twenty-five percent (25%) of the homeownership dwelling units (the "Affordable Homeownership Units"), shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the median household income for the Worcester PMSA, or applicable PMSA in the event of a change.

The price for such Affordable Homeownership Unit shall be set at the figure affordable to a household earning not more than seventy percent (70%) of the median household income in the Worcester PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, pricing shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by the Massachusetts Department of Housing and Community Development (DHCD).

3B. At least twenty-five percent (25%) of the rental dwelling units (the "Affordable Rental Units"), shall be reserved in perpetuity for lease to households earning no more than eighty percent (80%) of the median household income for the Worcester PMSA, or applicable PMSA in the event of a change. The rental price for such Affordable Rental Unit shall be set at the figure affordable to a household earning not more than seventy percent (70%) of the median household income in the Worcester PMSA, adjusted for household size. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, rent prices shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by the Massachusetts Department of Housing and Community Development (DHCD). ***The Applicant is not authorized at any time to have more than 50% of the rental dwelling units established as Affordable Rental Units regardless of the rental price fixed for such Affordable Rental Units.***

4. Delete Condition #4 in its entirety and incorporate the following change therefor:

4A. To the extent permitted by law, preference for the sale of seventy percent (70%) of the Affordable Homeownership Units in the initial round of sales shall be given to persons or families who are first-time buyers and who are either (a) Sterling residents; and/or (b) the parents or children of current Sterling residents; (c) and employees of the Town of Sterling. The local preference shall be implemented by a Lottery Agent approved by the Board. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan to the Board of Appeals for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

4B. To the extent permitted by law, preference for the rental of seventy percent (70%) of the Affordable Rental Units in the initial lease up of the Development and at all subsequent times shall be given to persons or families who are either (a) Sterling residents; and/or (b) the parents or children of current Sterling residents; (c) and employees of the Town of Sterling. The local preference shall be implemented by the Applicant, which will have responsibility for managing the Development, after consultation with the Board and in conformance with the requirements of DHCD. Tenants of the Affordable Rental Units shall be selected

in accordance with a tenant selection and assignment plan and a marketing plan consistent with this preference and the guidelines of DHCD.

5. Delete Condition #5 in its entirety and incorporate the following change therefor:

5A. Prior to the issuance of any building permit for a homeownership dwelling, the Applicant shall prepare the final draft of a Homeownership Regulatory Agreement and a Deed Rider and submit same to DHCD and the Board for approval as to form by the Board's legal counsel and for execution by and with DHCD, the Board of Appeals and/or the Town. Such document(s) shall contain at a minimum, the following terms:

- a. The Affordable Homeownership Units shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income for the Worcester PMSA, and the price for such Affordable Homeownership Unit shall be set at a price affordable to a household earning not more than seventy percent (70%) of the median household income in the Worcester PMSA or applicable PMSA in the event of a change, adjusted for household size, with a five percent (5%) down payment used to calculate such price.
- b. The right of first refusal to purchase an Affordable Homeownership Unit on resale shall be granted to the Board of Appeals, or its designee.
- c. The actual Affordable Homeownership Units shall be identified in the Homeownership Regulatory Agreement.
- d. The Affordable Homeownership Units shall be owner-occupied only; provided, however, that the Board may authorize the temporary rental of such unit at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as an illness in the family, military duty, or the like.

5B. Prior to the issuance of any building permit for a rental dwelling, the Applicant shall prepare the final draft of a Rental Regulatory Agreement and a Deed Rider and submit same to DHCD and the Board for approval as to form by the Board's legal counsel, which Board approval will not be unreasonably withheld, and for execution by and with DHCD, the Board of Appeals and/or the Town. Such document(s) shall contain at a minimum, the following terms:

- a. The Affordable Rental Units shall be reserved in perpetuity to households earning no more than eighty percent (80%) of the median household income for the Worcester PMSA.

b. The actual Affordable Rental Units in the initial lease up shall be identified in the tenant location plan. The Affordable Rental Units shall be generally scattered through out the rental component of the Project.

6. Delete Condition #6 in its entirety and incorporate the following change therefor:

6A. Prior to the issuance of any certificate of occupancy for a homeownership dwelling, the Applicant shall enter into a Homeownership Monitoring Agreement, approved as to form by DHCD and the Board's legal counsel, which Board approval will not be unreasonably withheld. The Board of Appeals shall notify the Building Commissioner, in writing, of such approval and provide to him or her copy of the Agreement. Such Agreement shall be consistent with the terms of this Decision and shall contain the following terms:

- a. The Monitoring Agent shall be DHCD, or another mutually agreeable entity.
- b. All costs associated with monitoring shall be borne by the Applicant, and, after the first round of sales, by the sellers of the Affordable Homeownership Units.
- c. All financial information submitted by the Applicant to the Monitoring Agent for the required cost certification after the first round of sales shall be provided by certified mail to the Board at the same time.

6B. Prior to the issuance of any certificate of occupancy for a rental dwelling, the Applicant shall enter into a Rental Monitoring Agreement, approved as to form by DHCD and the Board's legal counsel, which Board approval shall not be unreasonably withheld. The Board of Appeals shall notify the Building Commissioner, in writing, of such approval and provide to him or her copy of the Agreement. Such Agreement shall be consistent with the terms of this Decision and shall contain the following terms:

- a. The Applicant shall annually recertify to the Monitoring Agent the continuing eligibility of the tenant of any Affordable Rental Unit. In the event that a tenant's income exceeds allowable income, the Applicant may charge the tenant a market rate for the rental dwelling unit; provided, however, that the Applicant shall convert, at the next change of tenant in a market rate rental unit within the Development, a comparable market rate unit to an Affordable Rental Unit in accordance with the Regulatory Agreement.

7. Delete Condition #7 in its entirety and incorporate the following change therefor:

7. The Affordable Homeownership Units shall not be segregated from the market rate homeownership units. The Affordable Homeownership Units shall not be substantially different in exterior appearance from the standard market rate

homeownership units. The Board agrees that no garages need be provided for the Affordable Homeownership Units. The Affordable Rental Units shall not be segregated from the market rate rental units. One half of the Affordable Rental Units shall be in each building (of two). The Affordable Units shall not be substantially different in exterior appearance from the standard market rate units in accordance with DHCD guidelines.

8. Incorporate the following change to Condition #9:

~~n. A construction phasing plan. The Applicant and the Town agree that the Applicant shall submit a sequencing plan that maximizes the Town's planned production goals for affordable housing and guarantees the Town a period of at least 2 years protection from other Chapter 40B projects.~~

9. Delete Condition # 13 in its entirety and incorporate the following change therefor:

13. Prior to the issuance of any building permit, the Applicant shall submit an Approval Not Required (ANR) Plan to the Board for its approval. The ANR Plan shall separate the rental component from the homeownership component.

A. Prior to the issuance of any certificate of occupancy, the Applicant shall establish a Unit Owners Association for the homeownership component. Membership in said Unit Owners Association shall be required by a deed restriction prepared by the Applicant and approved as to form by the Board's legal counsel, which approval shall not be unreasonably withheld, prior to execution thereof. The Board's legal counsel shall approve such document as to form after determining that the document is consistent with this decision. Such Unit Owners Association shall maintain the facilities set forth in Condition 11 of the original Comprehensive Permit. The Board of Appeals shall notify the Building Commissioner, in writing, of such approval and provide a copy of the approved documents. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common or private facilities in the homeownership component until the final dwelling unit is conveyed. Thereafter, such facilities shall be conveyed to the Unit Owners Association and such operation and maintenance shall be the responsibility of said Association. Prior to the turnover of responsibility to the Association, the Applicant shall provide written evidence to the Board that a reserve of two months has been established to fund maintenance and operation. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the Board with a copy of the contract.

B. The Applicant shall be permanently responsible for the installation, operation, and maintenance of all aspects of the common or private facilities in the rental component.

10. Delete Condition #14 in its entirety and incorporate substitute the following change therefor:

14. Prior to the issuance of any certificate of occupancy, the Applicant shall prepare proposed agreements between the Unit Owners Association and the entity to own and manage the rental component to ensure that common facilities required by this comprehensive permit shall be maintained and repaired as needed. Such proposed agreements shall be approved as to form by the Board's legal counsel, which approval shall not be unreasonably withheld, prior to execution thereof.

11. Delete Condition #34 in its entirety and incorporate substitute the following change therefor:

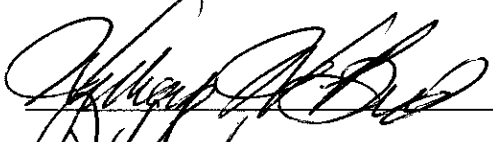
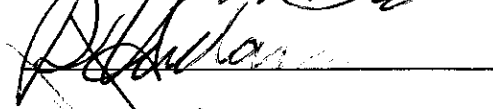
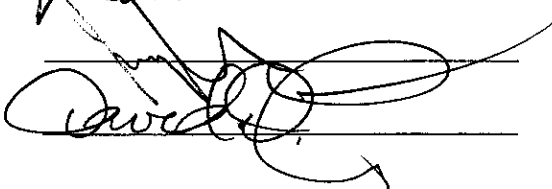
34. Prior to issuance of each certificate of occupancy for each of the first 64 homeownership market rate dwelling units, the Applicant shall provide the sum of five thousand dollars (\$5,000.00) to the Town, for a total of \$320,000.00, pursuant to G.L. c. 44, s. 53A, or G.L. c. 40, s. 5B, or other acceptable financing mechanism, for the purpose promoting affordable housing or other valid public purpose.

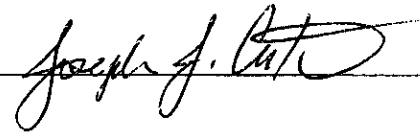
12. Delete Condition #41 in its entirety.

13. All other conditions set forth in the comprehensive permit dated February 21, 2006, shall remain in full force and effect.

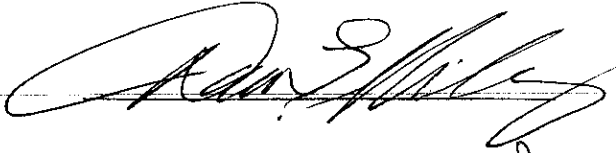
RECORD OF VOTE

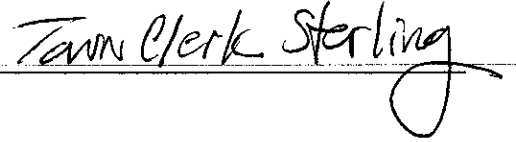
The following members of the Zoning Board of Appeals vote to above-referenced insubstantial changes to the Northgate Meadows comprehensive permit:



The following members of the Zoning Board of Appeals are in opposition to the grant of the above-referenced insubstantial changes:





Filed with the Town Clerk on January 13, 2010.

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Final Draft: February 23, 2006

FINDINGS AND DECISION

**RE: Application of J. Whitney Development, Inc. _____
for Comprehensive Permit**

DATE: February 21, 2006

PROCEDURAL HISTORY

1. On or about January 28, 2005, J. Whitney Development, Inc., 557 Lancaster Street, Leominster, MA (hereinafter, the Applicant), applied for a comprehensive permit from the Zoning Board of Appeals (ZBA), pursuant to G.L. c. 40B, to construct an affordable housing project off of Route 12 in Sterling (the Application). The Applicant proposed to construct "for sale" 128 two-bedroom condominium dwelling units in 27 buildings to be called "Northgate Meadows" (the "Development"). As proposed, the Development would be located on a site with approximately 18.04 +/- acres of land, being Assessors Map 23, Lot 18 (hereinafter, the Subject Property). The Subject Property is zoned Rural Residential as set forth in the Sterling Zoning By-Law.

2. A duly advertised public hearing was opened on 23rd of February of 2005, and continued to the following dates:

March 29, 2005

April 19, 2005

May 17, 2005

June 21, 2005

July 19, 2005

August 16, 2005

September 20, 2005

October 18, 2005

November 15, 2005

December 20, 2005

January 17, 2006

February 21, 2006

3. The public hearing was terminated on January 31, 2006.

4. The following documents and exhibits were received during the public hearing:

- Memo from Mr. Louis A. Manring, Sterling Public Works Dated January 17, 2006
 - Northgate Meadows Financial Analysis by MHJ Associates Dated January 17, 2006
 - Water System Review by Fay, Spofford & Thorndike, LLC Dated January 5, 2006
 - Fiscal Impact Report Northgate Meadows by Connery Associates Dated December 15, 2005
 - Copy of communication from the Sterling Board of Selectmen to Department of Housing and community Development Dated December 7, 2005
 - Memo from Mr. Louis A. Manring, Superintendent Sterling Public Works Dated November 10, 2005
 - Letter from The Giambrocco's Dated November 10, 2005
 - Letter from Edward and Esther Giambrocco Dated October 26, 2005
 - Review from Hannigan Engineering Dated October 18, 2005
 - Memo from McKenzie Engineering Company, Inc, Dated October 18, 2005
 - Memo from Abend Associates Dated October 17, 2005
 - Environmental Notification Form from Executive Office of Environmental Affairs
 - Memo from Haley and Ward Inc., Dated October 14, 2005
 - Report from MS Transportation Systems, Inc. Dated October 14, 2005
 - Memo from Mr. Louis A. Manring, Superintendent Sterling Public Works Dated October 6, 2005
 - Site Plan Set "Existing Conditions Plan" from Hannigan Engineering, Inc., Dated September 30, 2005
 - Letter from Joseph J. Curtin, P.E, Dated September 20, 2005
 - Memo from Lt. Thomas Kokernak to Sterling Planning Board Dated June 30, 2005
 - Copy of communication from Attorney Robert B. Bowen to Mr. Edward R. Giambrocco, Dated June 27, 2005
 - Copy of communication from Director of Administrative Service Wachusett Regional School District to Mr. Peter Campobasso Dated June 23, 2005
 - Flow Test Report from McKenzie Engineering Company, Inc. to Mr. Bill Hannigan
 - Technical Memorandum from Abend Associates Dated May 16, 2005
 - Copy of Notice of Subdivision Approval from Attorney Robert B. Bowen received May 10, 2005
 - Report review from Hannigan Engineering in response to Haley and Ward review dated April 19, 2005
 - Report from Haley and Ward, Inc., Dated April 19, 2005
 - Memo from Mr. John Bouvier dated April 5, 2005
 - Memo from Lt. Thomas Kokernak Dated April 1, 2005
-

- Memo from Conservation Commission Dated February 16, 2005
- Memo from Mr. Louis A. Manring Sterling Department of Public Works Dated February 16, 2005
- Memo from Sterling Police Chief Gary M. Chamberland Dated February 11, 2005
- Letter from Ms. Clare Fisher, Council on Aging Dated February 7, 2005

FINDINGS

5. The Applicant submitted the following information pursuant to 760 CMR 31.01:

- a. it is or will become a "limited dividend corporation" as that term is used in G.L. c. 40B, s. 21 and 760 CMR 31.01 (1);
- b. evidence of a subsidy as indicated by the project eligibility/site approval letter of MassHousing dated September 22, 2004 pursuant to its Housing Starts Program and the New England Fund Program of the Federal Home Loan Bank of Boston.
- c. the Applicant alleges "control of the site" as that term is used in 760 CMR 31.01, by virtue of the deed dated April 8, 2005, recorded in the Worcester County Registry of Deeds as Book 36655, Page 110.

6. The Town of Sterling, according to the DHCD, has not achieved the statutory minimum set forth in G.L. c. 40B, s. 20 and or 760 CMR 31.04 in that affordable housing does not constitute more than 10% percent of the total number of dwelling units nor is 1.5% of the Town's land area in affordable housing.

7. The Board retained the following consultants to assist in the review of the application:

- * Civil Engineer: Haley and Ward, Waltham, MA
- * Traffic Engineer: Abend Associates, Burlington, MA
- * Special Legal Counsel: Mark Bobrowski, Concord, MA
- * Pro Forma: MHJ Associates, Brookline, MA

8. The proposed development was reviewed by the following municipal officers or agencies:

- * Board of Health
 - * Planning Board
 - * Building Commissioner
 - * Conservation Commission
 - * Fire Department
 - * Department of Public Works
 - * Board of Selectmen
 - * Police Department
-

* 40B Review Committee

9. If developed in accordance with the conditions set forth herein, the proposed Development will be consistent with local needs.

DECISION

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of Sterling, after public hearing and findings of fact, hereby grants a comprehensive permit to the Applicant for the construction on the Subject Property of one hundred twenty eight (128) dwelling units with associated infrastructure and improvements, subject to the following conditions. As used herein, the term "Applicant" shall mean the Applicant, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Zoning Board of Appeals. Unless otherwise indicated herein, the Board of Appeals may designate an agent or agents to review and approve matters set forth herein.

Conditions

1. The Development shall be constructed in substantial conformance with the plans of record set forth below. Any change shall be governed by the provisions of 760 CMR 31.03.

- Site Development Plan By Hannigan Engineering Dated January 27, 2005.
- Architectural Drawing By Mckenzie Engineering Company, Inc. Dated November 15, 2005

2. The Development shall be limited to 128 dwelling units. The Development shall be limited to twenty seven residential buildings. All of the dwelling units shall have only two bedrooms.

3. Twenty-five percent (25%) of the dwelling units (the "Affordable Units"), shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the median household income for the Worcester PMSA, or applicable PMSA in the event of a change. The price for such Affordable Unit shall be set at the figure affordable to a household earning not more than seventy percent (70%) of the median household income in the Worcester PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, pricing shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by the Massachusetts Department of Housing and Community Development (DHCD).

4. To the extent permitted by law, preference for the sale of seventy percent (70%) of the Affordable Units in the initial round of sales shall be given to persons or families who are

first-time buyers and who are either (a) Sterling residents; and/or (b) the parents or children of current Sterling residents; (c) and employees of the Town of Sterling. The local preference shall be implemented by a Lottery Agent approved by the Board. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan to the Board of Appeals for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

5. Prior to the issuance of any building permit, the Applicant shall prepare the final draft of a Regulatory Agreement and a Deed Rider and submit same to the Board for approval as to form by the Board's legal counsel and for execution by and with the Board of Appeals and/or the Town. Such document(s) shall contain at a minimum, the following terms:

- a. The Affordable Units shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income for the Worcester PMSA, and the price for such Affordable Unit shall be set at a price affordable to a household earning not more than seventy percent (70%) of the median household income in the Worcester PMSA or applicable PMSA in the event of a change, adjusted for household size, with a five percent (5%) down payment used to calculate such price.
- b. The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Board of Appeals, or its designee.
- c. The actual Affordable Units shall be identified in the Regulatory Agreement.
- d. The Affordable Units shall be owner-occupied only; provided, however, that the Board may authorize the temporary rental of such unit at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as an illness in the family, military duty, or the like.

6. Prior to the issuance of any certificate of occupancy, the Applicant shall enter into a Monitoring Agreement, approved as to form by the Board's legal counsel. The Board of Appeals shall notify the Building Commissioner, in writing, of such approval and provide to him or her copy of the Agreement. Such Agreement shall be consistent with the terms of this Decision and shall contain the following terms:

- a. The Monitoring Agent shall be CHAPA, or another mutually agreeable entity.
 - b. All costs associated with monitoring shall be borne by the Applicant, and, after the first round of sales, by the sellers of the Affordable Units
 - c. All financial information submitted by the Applicant to the Monitoring Agent for the required cost certification after the first round of sales shall be provided by certified mail to the Board at the same time.
-

d. The final cost certification by the Monitor shall be conducted not more than ninety (90) days after conveyance of the final dwelling unit in the first round of sales.

7. The Affordable Units shall not be segregated from the market rate units. The Affordable Units shall not be substantially different in exterior appearance from the standard market rate units. The Board agrees that no garages need be provided for the Affordable Units.

8. During construction, the Applicant shall conform with all local, state and federal laws regarding noise, vibration, dust and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction shall not commence on any day before 7:00 a.m. and shall not continue beyond 6:00 p.m.; provided, however, that exterior construction shall not commence on Saturday before 9:00 a.m. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Sterling Police Department. The construction site shall be secured in a manner approved by the Building Department so as to prevent injury or property damage to the residents of the Town.

9. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans to the Board, and the Building Inspector shall not issue a building permit until the Board approves all such final plans. The Board may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report. The Applicant shall submit a copy of the final plan(s) directly to Haley & Ward and Abend Associates. The Board shall take action with regard to such submittals within 45 days, unless such time is extended by mutual agreement.

- a. Lighting plan;
- b. Landscaping, fencing, and planting plan;
- c. Grading plan;
- d. Erosion control plan;
- e. Architectural plan, including all principal and accessory structures;
- f. Utilities plan including water, hydrants, gas, electric, cable, and telephone;
- g. Signage plan, including signs during the marketing phase;
- h. Stormwater management plan consistent with the DEP's Stormwater Management Policy;

- i. Open space and recreation plan;
- j. Snow storage and refuse disposal plan;
- k. Cutting plan, showing the limits of clearing;
- l. Any wastewater disposal application and plan submitted to the Board of Health whether under Title V or the local Board of Health regulations;
- m. Fire sprinkler plan.

10. The Applicant shall design such final plans with the following specifications:
- a. The Applicant shall conform with all pertinent requirements of the Americans with Disabilities Act and Massachusetts Architectural Access Board, if applicable.
 - b. All signage, including signs to promote sales, shall comply with the Zoning By-law and shall be maintained in a sightly condition by the Unit Owners Association in conformance therewith.
 - c. Water system design shall be in conformance with the Department of Public Works rules and regulations and installation specifications.
 - d. The Board shall approve final site plans to assure access to the side and rear of dwellings and adequate internal turning radii.
 - e. All utilities shall be installed underground to the extent feasible.

11. The Applicant has proposed, and the Board hereby requires, that the following aspects of the Development shall be and shall remain forever private, and that the Town of Sterling shall not have, now or ever, any legal responsibility for operation, maintenance, repair or replacement of same:

- All roadways and parking areas
- Storm water management facilities, including detention basins
- Snow plowing
- Landscaping
- Trash removal
- Street lighting
- Building repair and maintenance
- On-site water and sewer mains and services

12. The roadway within the Development shall not be dedicated to or accepted by the Town Meeting.
-

13. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common or private facilities set forth above until the final dwelling unit is conveyed. Thereafter, such facilities shall be conveyed to a Unit Owners Association and such operation and maintenance shall be the responsibility of said Association. Prior to the turnover of responsibility to the Association, the Applicant shall provide written evidence to the Board that a reserve of two months has been established to fund maintenance and operation. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the Board with a copy of the contract.

14. Prior to the issuance of any certificate of occupancy, the Applicant shall establish a Unit Owners Association. Membership in said Unit Owners Association shall be required by a deed restriction prepared by the Applicant and approved as to form by the Board's legal counsel prior to execution thereof. The Board's legal counsel shall approve such document as to form after determining that the document is consistent with this decision. Such Unit Owners Association shall maintain the facilities set forth above in Condition 11. The Board of Appeals shall notify the Building Commissioner, in writing, of such approval and provide a copy of the approved documents.

15. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system subject to the approval of the Board or its agent in the time period prescribed in Condition #9. Such guidelines shall be incorporated by reference in the organizational documents of the Unit Owners Association. In the event a management company is engaged, the guidelines shall be incorporated by reference in the management contract.

16. In the event that the Applicant, its successors, or agent fails to maintain the on-site stormwater management system in accordance with applicable guidelines for operation and maintenance, the Town may conduct such emergency maintenance or repairs, and the Applicant shall permit entry onto the Property to implement the measures set forth in such guidelines. In the event the Town conducts such maintenance or repairs, the Applicant shall promptly reimburse the Town for all reasonable expenses associated therewith; if the Applicant fails to so reimburse the Town, the Town may place a lien on the Development or any unit therein to secure such payment.

17. All invoices generated by the Board's peer reviewers during the application stage shall be paid within thirty days of the filing of this decision with the Town Clerk, whether this decision is appealed or not, and shall be paid from the existing escrow account established for this purpose. If such account is not adequate to pay all outstanding invoices, the Applicant shall immediately replenish such account. No post-permit reviews of documents or plans shall be conducted until such invoices have been paid in full. No building permit or certificate of occupancy shall be issued until such invoices have been paid in full.

18. The Board shall require the establishment of an escrow account to assure the payment of the reasonable fees of the consulting engineer and the Board's legal counsel

for review of the plans or documents described herein or for inspections during the construction phase. The initial deposit shall be \$10,000.00, subject to replenishment when the balance falls below \$2,500.00. The results of any inspections shall be provided to the Board in written format.

19. A preconstruction conference with town departments shall be held prior to the commencement of construction. For the purposes of this decision, "commencement of construction" shall occur when the clearing and grubbing (removal of stumps and topsoil) has been initiated. The contractor shall request such conference at least one week prior to commencing construction by contacting the Board in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the Board, and other municipal officials or boards. The preconstruction conference shall also set the limits of the site work and excavation and schedule phasing for the removal or relocation of earth materials. Said inspections shall not interfere with, impede, or impair construction. The Board or any agent performing an inspection shall indemnify and hold harmless the Applicant or its agents from any liability for personal injury or damage to property.
 20. The Board or its agents may enter onto and view and inspect the Property during regular business hours, without notice, to ensure compliance with the terms of this Decision, subject to applicable safety requirements.
 21. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any order of the Department of Environmental Protection (DEP), if applicable, regarding this property, shall be made a part of this comprehensive permit. If there is any inconsistency between the plan of record for this permit and the plans as may be approved by the Conservation Commission or the DEP, the Applicant shall submit an amended plan to the Zoning Board of Appeals and to the Conservation Commission and to DEP (if applicable) for approval in order that all approvals are consistent with one another. Such submittal shall be made by certified mail or in hand at a regular meeting. Said amended plan submitted to the Board shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable.
 22. No certificate of occupancy for any building or phase shall be issued until the infrastructure or common facilities or common improvements specified in this decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or phase, or adequate security has been provided, reasonably acceptable to the Board of Appeals, to ensure the completion of such improvements. The choice of performance guarantee shall be governed by the provisions of G.L. c. 41, s. 81U (excluding the statutory covenant which shall not apply in this matter) and shall be approved as to form by the Board's legal counsel. The Board of Appeals shall notify the Building Commissioner, in writing, of such completion or performance guarantee.
 23. The Zoning Board of Appeals shall release any performance guarantee taken pursuant to Condition #22 in phases, all in accordance with the Subdivision Rules and Regulations of the Planning Board.
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24. In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of the security:

- a. the Board's estimate of the cost to complete the work; plus
- b. a ten percent margin of error; plus
- c. an appropriate rate of inflation over a five year period.

25. All performance bonds shall contain the following provision:

If the Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, agreements, terms and provisions set forth in the following:

- a. The plan of record;
- b. This Decision attached hereto as an exhibit with all attachments thereto; and

then this obligation shall be void; otherwise, it shall remain in full force and effect and the aforesaid sum shall be paid to the Town of Sterling as liquidated damages.

26. The Applicant shall provide an "as-built" plan as to building locations, electrical distribution system, roads, gas service, and water and sewer facilities to the Board of Appeals and Building Department prior to the issuance of the final certificate of occupancy in the Development in accordance with applicable regulations, which shall be approved by the Board or its agent. The Applicant shall provide a separate as-built plan depicting the water mains, hydrants and services to the Department of Public Works demonstrating compliance with the Department's rules and regulations and installation specifications.

27. All street names shall be approved by the Board or its agent.

28. The following conditions were recommended by the Board's consulting civil engineers, Haley and Ward, Inc.:

- a. Prior to the issuance of a building permit, the applicant shall upgrade the Town of Sterling water distribution system as recommended by the McKenzie Engineering, Inc. and Fay Spofford and Thorndike, Inc. reports which generally require the installation of a new 12-inch from North Road Road to and in to the proposed site.
 - b. Individual water meters shall be provided for each dwelling unit offered for sale.
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c. Prior to the issuance of a building permit, the Applicant will present to the Board of Appeals or its agent, documentation that City of Leominster will accept wastewater flows from the project.

d. Prior to the issuance of a building permit, the Applicant will present to the Board of Appeals or its agent, documentation that the subdivision roadway providing access to the site has been approved by the Leominster Planning Board and that its construction is appropriately bonded.

29. The following conditions were recommended by the Board's consulting traffic engineers, Abend Associates:

a. Design of the Route 12/Industrial Park Drive intersection is subject to the approval of the MassHighway Department and the City of Leominster. These permits and/or approvals (or temporary access permits from these agencies) should be required prior to construction commencing. The permit issued by MassHighway must include an acknowledgment that the new roadway will be the only access for this residential project. Consistent with MassHighway regulations, no occupancy of the site can occur without this permit. All changes required by and conditions incorporated in MassHighway or City of Leominster permits related to Industrial Park Drive between the site access and Route 12, inclusive, shall apply as conditions on the project even if they are not related to on-site design elements.

b. Grading and landscaping on both sides of the project driveway at Industrial Park Drive shall be designed and built in a way that enhances visibility to the greatest extent possible for drivers exiting the project. Simply meeting AASHTO requirements for safe stopping and intersection sight distances should not be the standard here; rather, the distance should be made as great as feasible.

c. All unit driveways shall be a minimum of 22 feet long from garage door to the back edge of the curb; if there is a sidewalk then the distance should be measured to the back edge of the sidewalk. Wherever possible the driveway should be greater than 25 feet.

d. Sidewalks should not be provided along the lesser-used streets of the project. Specifically, sidewalks should not be provided along Road C or west of Road C along Road A. The final sidewalk plan must be reviewed by the consulting engineers prior to a building permit being issued.

e. Where sidewalks are directly adjacent to a roadway there should be vertical curbs (minimum 6-inch reveal) provided.

f. Roadway widths of 24-feet are sufficient to allow for the roadways to be used for visitor parking.

30. The landscaping shown on the final approved plan shall be maintained in perpetuity by the Unit Owners Association. Any dead vegetation shall be removed immediately and

replaced in accordance with the specifications on said plan during the life of project by Unit Owners Association.

31. Blasting, if any, shall be performed in accordance with regulations of the Commonwealth of Massachusetts, 527 CMR. 13.00, and in accordance with any existing written regulations for blasting of the Fire Department. Prior to blasting, the Applicant shall prepare a well-testing plan of nearby residences for the Board's approval.

32. All of the dwellings shall have fire sprinklers.

33. The Town of Sterling and the City of Leominster and their agents are hereby authorized to enter upon the Subject Property for the purpose of maintaining and repairing the water supply system, sewer facilities, or electrical distribution system after the connection of the systems to the public systems.

34. Prior to issuance of each certificate of occupancy for each of the first 64 market rate dwelling units, the Applicant shall provide the sum of five thousand dollars (\$5,000.00) to the Town, for a total of \$320,000.00, pursuant to G.L. c. 44, s. 53A, or G.L. c. 40, s. 5B, or other acceptable financing mechanism, for the purpose promoting affordable housing or other valid public purpose. Prior to issuance of each certificate of occupancy for each of the remaining 32 market rate dwelling units, the Applicant shall provide the sum of ten thousand dollars (\$10,000.00) to the Town, for a total of \$320,000.00 pursuant to G.L. c. 44, s. 53A, or G.L. c. 40, s. 5B, or other acceptable financing mechanism, for the purpose promoting affordable housing or other valid public purpose.

35. The Board of Appeals hereby waives no fees associated with the Development. All fees shall those in effect on the date of the Application.

36. Prior to the commencement of construction, the Applicant shall demonstrate to the satisfaction the Board that the water main providing Sterling Town Water to the Development is entirely and exclusively within the control of the Water Department and the Sterling Department of Public Works, and no other public or private entity. In order to make such demonstration, the Applicant must provide evidence of either (1) an easement entirely located with the Town of Sterling to access the Sterling public water supply in a public way which authorizes the Sterling Department of Public Works to have access for maintenance and repairs, approved as to form by the Board's legal counsel; or (2) in the event the water main exits the Town of Sterling and enters the City of Leominster in the public right of way of Route 12, evidence that the Massachusetts Highway Department will place exclusive control of access to such water main in the jurisdiction of the Sterling Department of Public Works.

37. If applicable, the water main serving the Development located in the Leominster portion of the Subject Property not within the Route 12 right of way shall not be located in the right of way of the proposed definitive plan roadway in the City of Leominster.

38. The Applicant shall not permit any other entity to connect to the water main providing Sterling public water supply whether in the Sterling or Leominster portion of the Subject Property.

39. Prior to the issuance of any certificate of occupancy, the Applicant shall provide an easement over that portion of the Subject Property located in Leominster assuring access to the water main for the Sterling Department of Public Works and approval as to form by the Board's legal counsel.

40. The Applicant hereby authorizes the Sterling Department of Public Works to enter upon the Subject Property to terminate individual water service in the event of any customer's nonpayment or violation of applicable rules and regulations.

41. The Applicant has obtained LIP endorsement from the Sterling Board of Selectmen to increase the number of dwelling units in the Development from 128 to 158. Such LIP endorsement contemplates a final Development of 86 condominium units and 72 rental units. At the time of this decision, the DHCD had not yet approved the LIP application. In an effort to allow the Applicant to proceed with site preparation and the commencement of construction, the Board has approved the 128 unit condominium project, for which all jurisdictional prerequisites have been satisfied. However, it is the intent of the Board, with the Applicant's express agreement, that this decision be limited in effect. Specifically, the Board hereby authorizes the Applicant to commence construction only to the extent that the dwelling units and site features, including roadways, stormwater management facilities, or other infrastructure or improvements, to be actually constructed are shown on both plans: the 128 units plan and the 158 unit plan. To the extent that a dwelling unit or site feature as set forth above is not depicted on both plans, there shall be non commencement of construction with regard to same. The Applicant shall identify those units shown on both plans prior to the issuance of any building permit.

42. The Sterling Fire and Police Departments are hereby authorized by the Applicant to enter upon the Subject Property for enforcement of the law.

43. If the Applicant is unable to obtain permission to connect to the Leominster sewer system, the Applicant shall apply to the Board for a substantial change pursuant to 760 CMR 31.03, with regard to any proposed modification to the plans of record.

44. The Applicant has requested, and the Board of Appeals has granted, the waivers from local rules set forth below in Appendix A. To the extent that the Plan shows additional waivers at specific locations not expressly set forth above, these waivers are also granted. To the extent the plans are silent on a particular issue, the appropriate Town by-law shall apply. In the event the Applicant or the Board's consulting engineer determines, in the final design of the Project, that additional waivers, not shown on the plans are required, the Applicant shall be required to obtain such additional waivers after written request to the Board. The Board may grant such additional waivers in accordance with applicable rules and regulations.

RECORD OF VOTE

The following members of the Zoning Board of Appeals vote to grant a comprehensive permit subject to the above-stated terms:

Donald F. Moore

[Signature]

The following members of the Zoning Board of Appeals are in opposition to the grant of the comprehensive permit:

Filed with the Town Clerk on March 9, 2006.

Effective March 29, 2006

**APPENDIX A
WAIVERS GRANTED BY THE BOARD OF APPEALS**

I. ZONING BY-LAWS

ARTICLE 2. USE, DIMENSIONAL AND TIMING REGULATIONS

2.3 USE REGULATIONS

2.3.1 Table of Principal Uses

Waiver to allow Multifamily Development with the comprehensive permit serving as the Special Permit from The Board of Appeals.

2.3.3 Construction Trailers

"Temporary trailers, used as work offices and/or storage facilities in connection with construction work on the same site, may be allowed by the Board of Selectmen in any district through the issuance of a renewable 90-day permit."

Waiver to allow the use of Construction Trailers on the site for the duration of the construction by the issuance of the Comprehensive Permit by the ZBA.

2.4 APPLICATION OF DIMENSIONAL REQUIREMENTS

2.4.4 Multiple Buildings or Uses on a Lot

"Multiple principal uses or building on the same lot must meet the dimensional requirements of Section 2.5 without counting any area, frontage or yard twice. Not more than one principal building shall be erected on a lot unless each such building is served by access and services determined by the Building Inspector to be functionally equivalent to those required for separate lots by the Planning Board in its Subdivision Regulations."

Waiver to allow multiple buildings on a lot without the restrictions of Article 2 Section 2.4.4.

2.5 TABLE OF DIMENESIONAL CONTROLS

2.5.3 Building Height

"The height of a building, other than a church, above average grade at the building site, shall be less than 36 feet. For the purpose of this provision chimneys, ventilators, antennae, spires and similar unoccupied projections above the roof are not included in building height."

Waiver to allow the height of a building above average grade at building height to be less than 60 feet.

4228 – *“Street intersections shall not be less than five hundred (500) feet apart nor more than fifteen hundred (1500) feet apart in Neighborhood Residential Zones, and not less than six hundred (600) feet apart or more than twenty two hundred (2200) feet apart in Rural Residential Zones.”*

Waiver to allow street intersections in a Rural Residential Zone to be not less than three hundred (300) feet apart.

4250 Lanes or Dead-end Streets

4251 – *“A lane or dead end street, whether temporary or permanent, shall not serve more than six (6) dwelling units, nor have a centerline length in excess of 675 feet from the right of way edge of the intersecting street to the furthest right of way edge of the dead-end street. In cases where the corner lots at the intersection of the proposed street and existing street is part of the subdivision plan. In the case of a lane with one or both corner lots being pre-existing buildable lots the 675 feet will be measured from the mean of their back lot lines where they intersect with the proposed road. The Board may waive this provision due to unusual topography or other conditions.”*

Waiver to allow the private driveways, constructed as minor streets, to be greater than 675 feet and to serve more than 6 dwelling units.

4255 – *“Only lanes and cartways may be permitted to be dead-end streets.”*

Waiver to allow the private driveways, constructed as a minor street, to be a dead end street.

4260 Construction of Roadways

4265 – *“All top soil, sub-soil, rocks, ledge and other unsuitable material shall be excavated to provide a gravel base depth of at least two (2) feet within the traveled way, eight (8) inches for shoulders and sidewalks.....”*

Waiver to allow a gravel base depth of twelve (12) inches within the traveled way.

4300 Storm Water Management

4340 – *“.....Catch basins will be provided with granite curb inlets with a six (6) inch reveal and with three (3) inch vertical openings along the entire length of the grates. The curb inlets will be blended to the bituminous berms with beveled granite transition pieces. Where the curb inlets are located on a curve they will be curved to match the curvature of the paved surface.”*

Waiver to allow the catch basins to be constructed without granite curb inlets.

4500 Other Improvements

4512 – *“Sidewalk pavement shall be five (5) feet wide on collector streets, and four (4) feet wide elsewhere. Except at intersections, sidewalks shall be separated from the traveled way by not less than the required shoulder width.*

(d) Open Space

(1) "At least sixty percent (60%) of the parcel shall be maintained as open space, and at least forty percent (40%) of the parcel shall be contiguous open space, excluding required yards and buffer areas."

Waiver to allow a reduction in the required amount of open space to twenty-five percent (25%), and to allow non-contiguous open space areas.

4.3 RATE OF DEVELOPMENT

Waiver from this section in its entirety.

ARTICLE 5. DEFINITIONS

Waiver to allow the following definitions to supersede the definitions within Article 5 of the Town of Sterling Zoning By-laws.

- Dwelling, Multifamily shall mean a single building containing at least two (2) units, but not more than six (6) units for sale.

ARTICLE 6. ADMINISTRATION AND PROCEDURES

6.3 SPECIAL PERMITS

Waiver from this section in its entirety to allow the project to be reviewed under the Comprehensive Permit process by the Zoning Board of Appeals.

6.4 SITE PLAN REVIEW

Waiver from this section in its entirety to allow the project to be reviewed under the Comprehensive Permit process by the Zoning Board of Appeals.

I. SUBDIVISION CONTROL REGULATIONS

SECTION 2000 GENERAL REGULATIONS

2100 Definitions

Collector shall mean a street with anticipated traffic equivalent to that generated by 50 homes or more, or which serves abutting land zoned for business or industry.

Waiver to allow the roadways to be constructed to Minor Street standards.

SECTION 4000 REQUIRED IMPROVEMENTS

4220 Alignment

ARTICLE 4. SPECIAL REGULATIONS

4.2. MULTIFAMILY DEVELOPMENT

Current zoning is Rural Residence

4.2.1 Procedures

Waiver of the entire section to allow the procedures of MGL Chapter 40B govern the procedures for the approval.

4.2.2 Dimensional Requirements

(a) *Lot Area – Rural Residence and Farming, Lot Area per Dwelling Unit 15,000 sq.ft.*

Waiver to allow the required Lot Area per Dwelling Unit to be 6,100 sq. ft.

(b) *Other Requirements “All other dimensional requirements of Section 2.5 shall apply, except as provided in 4.2.3 (f).”* (Note: No Section 4.2.3 (f) exists.)

Waiver to allow the setback for all buildings, as measured at the foundation, to be setback a minimum of twenty-five (25) feet from all property lines.

4.2.3 Design Requirements

a. Site Design

- a. *“All dwellings and structures shall be located a minimum of 200 feet from adjacent properties and public ways, unless the Board of Appeals authorizes a setback reduction to a minimum of 100 feet upon its determination that existing natural vegetation and/or proposed plantings provided effective visual screening.”*

Waiver to allow all buildings, as measured at the foundation, to be setback a minimum of twenty-five (25) feet from all property lines. Setback requirements for other structures shall be fifteen (15) feet.

- b. *“Principal buildings on a lot in single ownership shall be no less than one hundred (100) feet apart from each other”*

Waiver to allow the required building separation distance between the living spaces of buildings to be twenty-five (25) feet as measured at the foundation. The building separation distance between a garage and the living space of a building shall be fifteen (15) feet as measured at the foundation. Building separation between garages shall be eight (8) feet as measured at the foundation.

- c. *“All dwelling and structures shall be located a minimum of 150 feet from adjacent surface water or wetlands, unless greater restrictions are imposed by state law.”*

Waiver to allow the minimum setback distances from buildings and structures, as measured at the foundation, to adjacent surface water or wetlands to be no less than ten (10) feet.

ATTEST: WORC. Anthony J. Vigliotti, Register